

**DISTRICT OF COLUMBIA
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

TRIPLE COOPERATIVE, INC.
Respondent

Case Nos.: I-00-20447
I-00-20353

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985 (D.C. Official Code §§ 2-1801.01 *et seq.*) and Title 21 Chapter 7 of the District of Columbia Municipal Regulations (“DCMR”). By Notice of Infraction (No. 00-20447) served by first-class mail, the Government charged Respondent Triple Cooperative, Inc. with a violation of 21 DCMR 700.3 for allegedly failing to properly store and containerize solid wastes.¹ The Notice of Infraction alleged that Respondent violated § 700.3 on November 29, 2001 at 724 Brandywine Street,² and sought a fine of \$1,000.

Respondent did not file an answer to the Notice of Infraction within the required twenty days after service (fifteen days plus five additional days for service by mail pursuant to D.C.

¹ 21 DCMR 700.3 provides: “All solid wastes shall be stored and containerized for collection in a manner that will not provide food, harborage, or breeding places for insects or rodents, or create a nuisance or fire hazard.”

² The Notices of Infraction did not indicate the quadrant (*i.e.*, N.W., N.E., S.W. or S.E.) in which 724 Brandywine Street is located.

Official Code §§ 2-1802.02(e) and 2-1802.05). Accordingly, on January 7, 2002, this administrative court issued an order finding Respondent in default, assessing a statutory penalty of \$1,000 as required by D.C. Official Code § 2-1801.04 (a)(2)(A), and requiring the Government to serve a second Notice of Infraction.

The Government served the second Notice of Infraction (No. 00-20353) on January 22, 2002. Respondent failed to answer that Notice within twenty days of service. Accordingly, on March 20, 2002, a Final Notice of Default was issued, finding Respondent in default on the second Notice of Infraction and assessing statutory penalties totaling \$2,000 pursuant to D.C. Official Code §§ 2-1801.04(a)(2)(A) and 2-1801.04(a)(2)(B). The Final Notice of Default also set April 10, 2002 as the date for an *ex parte* proof hearing, and afforded Respondent an opportunity to appear at that hearing to contest liability, fines or statutory penalties.

Norris Goins, the charging inspector in the captioned case, appeared at the April 10th hearing on behalf of the Government. Deborah Reid, property manager for Respondent, appeared on behalf of Respondent. Respondent entered an untimely plea of Admit with Explanation pursuant to D.C. Official Code § 2-1802.02(a)(2), along with a request for a suspension or reduction of any fines or statutory penalties.

As to the substance of the violation, Ms. Reid explained that the violation occurred between the thrice-weekly scheduled trash pick-up days, and, as of February, 2002, she has placed a larger dumpster at the property in question. As to Respondent's failure to answer, Ms. Reid explained that she had in fact received the Notices of Infraction, but was uncertain how to respond. She also noted that she had previously received a Notice of Infraction for one of the properties she manages from an unidentified governmental agency. That Notice of Infraction

was subsequently dismissed without any response by her and, as a result, she believed the captioned Notices of Infraction might have a similar disposition. Finally, Ms. Reid noted that she now has an assistant to keep track of official correspondence from the Government.

II. Findings of Fact

1. By its plea of Admit with Explanation, Respondent has admitted violating 21 DCMR 700.3 on November 29, 2001 at 724 Brandywine Street.
2. On November 29, 2001, Respondent failed to store and containerize for collection solid wastes in a manner that “will not provide food, harborage, or breeding places for insects or rodents, or create a nuisance or fire hazard” at 724 Brandywine Street. 21 DCMR 700.3.
3. Respondent received the first and second Notices of Infraction in this case. Respondent also received the January 7, 2002 and March 20, 2002 orders issued by this administrative court.
4. Respondent has scheduled trash collection at 724 Brandywine Street for Monday, Wednesday and Friday of each week. The date of the violation, November 29, 2001, was a Thursday, and, therefore, between the scheduled collection days.
5. At the time of the violation, the property located at 724 Brandywine Street had thirteen of its twenty-four units occupied. As of February 2002, eight additional

units were occupied, and Respondent purchased and installed a larger trash receptacle for the building.

6. Respondent has hired an assistant to assist its Property Manager in keeping better track of official government correspondence in the future.
7. Respondent did not respond to the Notices of Infraction because it did not understand how to respond, and because a previous Notice of Infraction that it had received from an unidentified agency was ultimately dismissed without any action on the part of Respondent.
8. Respondent has accepted responsibility for its unlawful conduct.
9. Respondent has undertaken demonstrable efforts to better maintain its property subsequent to the violation.
10. There is no evidence in the record of a prior history of non-compliance by Respondent.
11. Respondent has requested a reduction or suspension in any fines or statutory penalties assessed. The Government has offered no recommendation on the propriety of such a reduction or suspension in this case.

III. Conclusions of Law

1. Respondent violated 21 DCMR 700.3 on November 29, 2001. A fine of \$1,000 is authorized for a first violation of this regulation, which, in light of Respondent's

acceptance of responsibility, demonstrated efforts to better maintain its property and the lack of a prior history of non-compliance³, will be reduced to \$500. *See* 16 DCMR §§ 3201.1(a)(1) and 3216.1(b); *see also* D.C. Official Code §§ 2-1802.02(a)(2) and 2-1801.03(b)(6); U.S.S.G. 3E1.1; 18 U.S.C. § 3553.⁴

2. Respondent has also requested a reduction or suspension of the assessed statutory penalty. The Civil Infractions Act, D.C. Official Code §§ 2-1802.02(f) and 2-1802.05, requires the recipient of a Notice of Infraction to demonstrate “good cause” for failing to answer it within twenty days of the date of service by mail. If a party cannot make such a showing, the statute requires that a penalty equal to the amount of the proposed fine be imposed. D.C. Official Code §§ 2-1801.04(a)(2)(A) and 2-1802.02(f). If a recipient fails to answer a second Notice of Infraction without good cause, the statutory penalty doubles. D.C. Official Code §§ 2-1801.04(a)(2)(B) and 2-1802.02(f).
3. Based on the record before this administrative court, Respondent has failed to demonstrate good cause for its untimely plea. Respondent explained that it did not respond to the Notices of Infraction because it did not understand how to

³ While Respondent admitted at the hearing to receiving a prior Notice of Infraction, the agency issuing the infraction as well as the nature of the infraction is unknown. A search of this administrative court’s case files has revealed no prior issuance of a Notice of Infraction to this Respondent. In addition, Respondent testified that that Notice of Infraction had been dismissed. Therefore, I conclude that Respondent’s reference to the prior Notice of Infraction in this case does not establish a history of non-compliance.

⁴ The Rodent Control Act of 2000 is Title IX of the Fiscal Year 2001 Budget Support Act of 2000, effective October 19, 2000, D.C. Law 13-172. *See* 47 D.C. Reg. 8692 (November 10, 2000); 47 D.C. Reg. 6308 (August 11, 2000). Section 910(b) of that Act established new fines for violations of various rodent control measures, including § 700.3. 47 D.C. Reg. at 6339 (August 11, 2000).

respond, and because a prior Notice of Infraction that it had received from an unidentified agency was ultimately dismissed without any action on Respondent's part.

4. Respondent's explanation is unreasonable given the requirements of D.C. Official Code § 2-1802.02(e) and the clear instructions on the Notices of Infraction which require Respondent to file with this administrative court the yellow copy of the Notices indicating its plea of Admit, Admit with Explanation or Deny within fifteen days (plus five days for service by mail) of the date of service of the Notice of Infraction.
5. Moreover, Respondent was on notice as to the consequences of its failure to follow these instructions. Indeed, the Notice of Infraction provides in plain bold type:

WARNING: Failure to answer (see reverse) each infraction on this Notice within 15 days of the date of service will result in assessment of a penalty equal to and in addition to the specified amount of the fine

Accord DOH v. Service Cleaners, OAH No. I-00-20128 at 6-7 (Final Order, March 8, 2001). Accordingly, Respondent is liable for a statutory penalty in the amount of \$2,000, and it will be imposed without reduction.

IV. Order

Based upon the foregoing findings of fact and conclusions of law, and the entire record of this case, it is, hereby, this ____ day of _____, 2002:

ORDERED, that Respondent shall pay a fine and statutory penalties in the total amount of **TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that, if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, beginning with the date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real or personal property owned by Respondent pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

/s/ **04/26/02**

Mark D. Poindexter
Administrative Judge